85 - 1991

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

Supreme Court, U.S.
FILED
JUN 3 1986
JOSEPH F. SPANIOL, JR.
CLERK

RE:

EARLENE POLYAK — Petitioner

vs

FRANK HULEN AND
WILMA LESNANSKY — Respondent

PETITION FOR WRIT OF MANDAMUS TO THE SUPREME COURT OF THE UNITED STATES

EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

41 pp

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. whether order to sell retirement home at Public Auction without just compensation for restoration and maintenance for ten(10) years, without just compensation deprives Petitioner of property interests without due process and just compensation?

2. Whether neglience of clerks in filing timely submitted notice of appeal is unjust and writ of mandamus should issue out of this Court to correct filing date to date submitted United States Court of Appeals?

3. Whether order of United States Disrtict Judge closing case and preventing review on certorari is just and writ of mandamus should issue to keep case records,already in this court, in District Court for review on writ of certorari?

4. Whether order by the United States District Judge enjoing Petitioner from filing complaints in United States District Court is supported by Federal Law and should be withdrawn.

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STATEMENT OF FACTS

. On, or about August, 1983, Petitioner called Judge Wiseman about problems getting case heard in State Court, and he stated she could petition District Court, Middle District, Tennessee.

. Case No. 84-0082, was dismissed without Oral argument from this Court on October 26, 1984.

. Case No. 84-0083, dismissed without oral argument or hearing on December 3, 1984.

. Case No. 85-0116, dismissed within five days, on November 13, 1985, without hearing.

. Case No. 85-0120, dismsiied without oral argument or hearing on November 26, 1985.

. Case No. 3-85X-103, denied filing.

7. Case No. 85-0125, Judge did allege negilence or malfeasance, but did not schedule jury trial.

8. Case No. 84-0083, local counsel awarded costs.

9. Clerk held objection to award and filed after cost entered and Petitioner had to appeal(3) times to get appeal in Court of Appeals.

10. Notice of Appeal mailed February 1, received in Court of Appeals February 3, District Court February 7, 1986, Judge refuses to correct.

11. Judge Wiseman entered order May 2, 1986, closing all of above cases, and prevents review on certiorari and information withheld.
12. Clerk at the Court of Appeals returned Notice of appeal timely received on March 17, 1986 and renders notice late.
13. After appeal returned filed on April 10, 1986, returned after 30 days allowed to correct.
14. All motions sent to Judge, but not acted upon to correct appeal are being held.
15. Motion to recall mandate for objection to Edward Boston's costs and attorney fees, which Petitioner did not receive is held.
16. Edward Boston's costs and fees were mostly long distance calls to this father in Case No. 85-0083, William Boston, Dist. Ct.
17. All motions hearing enc banc oral argument, dismiss local attorney divided lolyalty, injunction against sale of property pending Court process denied. All motions being held.
18. Petitioner's final resort to letter to Judge Lively, he stated clerks would continue same service.

19. On December 7, 1985, Judge Hamilton denied appeal to Court of Appeals, Tenn. from Evans No.10647. denied appeal as a right.

20. On December 8, Petitoner filed complaint against Judge Hamilton and Circuit Court and joined to it Evans, Stack, Boston. Denial of civil and constitutional right.

21. On Decmber 26, 1985,Petitioner found order denying objection to sale in Chancery Court on Notice of Nonsuit Case No. 10611, 10612, signed by Judge Hamilton in Circuit Court.

22. On October 10, 1985, Circuit Court Clerk refused to allow appeal until Petitoner went to County Clerk to get copy of deed to additional forty(40) acres of Tenn, porperty.

23.Property on Jonestown and Marcella Rd. approx. 32 miles from new"Saturn "plant.

23. On July 29, 1983, Judge Hamilton ordered property sold after hasty almost secret trial.

24. Hearing conducted while jury out on another trial, in Maury, when complaint filed in Lawrence County.

25. Wilma Lesnansky signed complaint did not testify.

26. Petitioner acutely ill ,102 degrees asked twice reschedule, due to heart,but denied by lawyers.Mr. Stack did not enter bills.

27. On December 19, 1983, Judge denied new trial amend or alter for just compensation and instructed her to appeal judgment prepared by William Boston.

28. Judgment was unappeable, Judge and William Boston signed.Lawyer for family (7) years.

29. On January 10, 1984, Thomas Stack submitted Order and he, Judge and William Boston signed. Court Appeals ruled order should have been appealed on technicality appeal to order to sell propertynever heard, and Supreme Court denied all applications to appeal, in all cases submitted.

30. Court of Appeals order April 26, 1986, another unappealable order.Petitioner believes to prevent Supreme U.S. interfer sale of property.

31. On August 15, 1984, Court of Appeals deleted requirement Notice of Appeal filed in Court Rule 5(a). Petitioner believes used as law to discriminate who allowed to appeal.

ISSUES

1. Whether the Disrtict Court improperly closed cases and prevented review by writ of certorari.
2. Whether Court of Appeals improperly denied appeal by improper handling of Notice of Appeal.
3. whether Petitioner has no other adequate means of relief and is prejudiced not correctable on appeal in Case No. 84-6090 and 85-5032/5101/5147.

JURISDICTION

The jurisdiction of this Honorable Court is invoked in that this writ is filed within ninety (90) days thereof of the denial of Hearing En Banc in cases 84-6090, 85-5032/5101/5147,on February13, 1986.Petitioner believes it is invoked in Article III, Diversity of citizenship, Equal access to Justice, Seventh, Fifth and Fourteenth Amendments, 28 USCA 1651(a) 42 USC S ct. 1983, 42 USC 1982, and 42 USC 1981 as follows:

> All persons within the jurisdiction of the United States shall have the same right in every State...to sue, be parties and give evidence and to the full and equal benefit of all laws and proceedings of persons and property....

RELIEF SOUGHT

Petitioner, requests that a writ of mandamus issue from this Court directing the Honorable Thomas Wiseman to with draw order closing cases, and allow her to withdraw appeal, so that cases remain in District Court for review on writ of certorari. Also withdraw enjoin order against her.

And that this writ direct the Honorable Pierce Lively to correct Notice of Appeal to timely file date on March 17, 1986. And submit signed copy of Notice of Appeal received on this date to the Supreme Court instead of altered copy. Petitioner also requests that pending motion for reconsideration of recall of mandate to enter objections against Robert Boston's costs and fees to be acted upon with other pending motions.

Petitioner prays that this Court honor request for extension of time for jurisdictional statement for sixty(60) days as her notice of appeal was timely received and the above is beyond her control. Request for extension of time is being submitted within ninety(90) days of February 13, 1986.

Petitioner seeks injunction against sale of property pending Court process.

NO.
IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

IN RE:
EARLENE POLYAK PETITIONER

PETITION FOR WRIT OF MANDAMUS

Petitioner Earlene Polyak, pursuant to 1651(a), Rule 21(a) Federal Rules of Appellate procedure petitions this Honorable Court for a writ of mandamus to issue, directing the Honorable Thomas Wiseman Jr., United States District

CASES

Frank Hulen and Wilma Lesnansky Earlene(Plaintiff)	Appeal No. 84-6090 Dist. No. 1:84-0082 Appeal No. 85-5032/ 5101/5147 Dist. No. 1:84-0083
Jim Hamilton and the Circuit Court of Lawrence	Appeal No. 85-6134 Dist. No. 1:85-0116
Buford Evans & Sons	Appeal No. 85-6315 Dist. No. 1:85-0120
Thomas Stack Henry Henry & Stack	Appeal No. 85-5199 Dist. No. 1: 85-0125
William Boston Boston, Bates & Holt	Appeal No. 85-601 Dist No. 3-85X-103

Court, Middle District Court of Tennessee, with draw order closing the above named cases and allow Petitioner to withdraw Notice of Appeal so that these cases may be reviewed in writ of certorari, and that order enjoining her from filing cases in the District Court on November 13, 1985, also be withdrawn.

Petitioner, pursuant to Rule 21(a), FRAP, petitions this Honorable Court for a writ of Mandamus to issue directing the Honorable Pierce Lively, United States Court of Appeals to correct filing date on Notice of Appeal submitted and timely received on March 17, 1986, to allow appeal to Case No. 84-6090 and 85-5032/5101/5147, and to file and act on motions submitted to this Court. The denial of due process and equal treatment of pro se and right to be heard is in violation of civil and constitutional right secured by the Fifth and Fourteenth Amendments and equal access to justice.

Petitioner contends that her case has never been heard and the order to sell her property unconstitutionally deprives her of property

without due process and just compensation, and that she has no other adequate means of obtaining relief from the damages in the above cases. Appeal through notice of Appeal and writ of certiorari to the Supreme Court of the United States are the only means available to correct the prejudices suffered in these case, and both are blocked until writ mandamus is issued.

Petitioner contends that as a result of this unconstitutional act she has suffered damages by way of mental anguish and emotional stress on her damaged heart;pain and suffering; humilitation and embrassement;loss of ordinary pleasures of life, includin the threat of the loss of a right to never be regained to her retirement home.

REASONS WHY WRIT SHOULD ISSUE

1. The District Court imporerly issued order to close cases and prevents review by Writ of Certiorari.

The District Court improperly issued order to close cases and Petitioner believes that this action was intented in an effort to sell property. She obligated to submitt notice of appeal. The cases will be transferred to the Court of Appeals and this

Court pursuant to Rule 18 Supreme Court Rules, will not review cases in writ of certiorari except cases of imperative public importance.This case is important as Petitioner is obligated to appear pro se and she is unconstitutionally being deprived of her property without due process and just compensation.

> Even though district court found unconstitutional question frivilous, it is required practice to give the United States Attorney General notice and leave it to him to interviene. Wallach v. Liebraman,C.A.N.Y. 1966 366 2d 254.

The District Court has enjoined Petitioner from filing complaints in the Court.

> And all persons within the jurisdiction of the United States shall have the same right in every State ... to sue, be parties and give evidence and to the full and equal benefit of all laws proceedings of persons and property. 42 USC 1981.

Petitioner contends that writ of mandamus issue to direct the withdrawl of order to close cases which presents technically which was again inserted in the judical process to prevent her cases from being heard and cases reviewed.

On February 1, 1986, Petitioner mailed Notice of Appeal from Florida, which was received in the

Court of Appeals, Cincinnati, Ohio, on February 3, 1986, but it was not filed in the District Court until February 7, 1986, and had a received date of February 14, 1986. Petitioner has checked and found that District must have received Notice of Appeal. She later learned that clerks pick up certified mail with return card and that they mark the date. Judge Wiseman refuses to correct this date and appeal will be dismissed due to this mistake.

In February 1985, Petitioner submitted objection to Edward Boston's costs and fees, which were composed mostly of telephone calls to his father, William Boston, but this objection was not entered untill after order entered, or considered. She had to appeal case three(3) times to get it into the Court of Appeals at a cost of $280.00.Petitioner is disabled and cannot work, she contends that the clerical process should be reviewed.as to their prejudice toward pro se.

2. The Court of Appeals improperly denied appeal by improper handling of Notice of appeal.

The Court of Appeals has improperly deined

Petitioner appeal by returning Notice of Appeal timely submitted on March 17, 1986. The appeal was returned within four days, but the clerk did allow Petitioner to return it to the Court. A motion to show cause as to where abouts of Notice of Appeal was submitted and appeal finally returned filed April 10, 1986, which would make appeal untimely. It was also returned after 30 day period allowed to correct date. A motion has been submitted to correct appeal again, but it is being held with other motions which have not been acted on.

Petitioner finally wrote a letter to the Honorable Pierce Lively, Chief Judge to complain about Notice of Appeal, and he alleged that he invested complaint and did not find clerks were treating Petioner any different than others, and that the service would remain the same.

All of the motions submitted to the Court of Appeals have been denied, and Petitioner's cases were dismissed without oral agument and her cases have never been heard. Case 85-6315,was dismissed for lack of jurisdiction without allowing brief. Petitioner noticed that this dismissal took

ace after a conservation between a lawyer and
suprevisor. She did not receive a motion for
smissal.

> ... due process places upon the government the the duty to give notice and the opportunity to be heard. Binkeroff Faris Savings Co., v. Hill, 281 US 673 678(1930)to individuals whose interests in life, liberty, or property were adversly affected by government action The assurance of a fair hearing before a "neutral magristate" who has no direct, personal substantial interest in reaching a conclusion against him in his case. Tumey v. Ohio, 273 U S 510 523 (1927)

titioner's case has never been heard and she
quests that writ of mandamus issue to correct the
ling date on her appeal and that her motions be
ted upon.

3. Whether Petitioner has no other means of relief and is prejudiced in a way not correctalbe on appeal in Case No. 84-6090 85-5032/5101/5147.

Petitioner has no other adequate means to
tain relief in correcting notice of appeal file
te and order to close above cases as the Court
not act on motions and refuse to correct these
stakes. Petitioner does make mistakes, but these
struments were timely filed. As a result of this
nflict she cannot file a jurisdictional statement
submit writ of certiorari with information

supressed from review and she is again denied the constituional right of due process of the Courts. Among these are that party seeking issuance of writ neve no other adequate means to attain the relief ne desires." Roche v. Evaporated Milk Assn., 319 U.S. 394, 402-403 (1976).

Petitioner has been subjected to local prejudice and influence during the process of trying to get her case heard to be awarded just compensation for her investment in her retirement home, but cases have been verbally dismissed, evidence supressed, dates changed to her disadvantage, and attorney for the family, William Boston admits writing unfavorable letters about her to attorneys, and they will not go against local influence.

Petitioner believes her appeals in the Courts of Tennessee were denied during docket control. She did submit that 60.02 TRAP, intrinsic and extrinsic was involved in brief to Supreme Court, Tennessee and served Attorney General with several materials. She belives lawyers trying to break old land owner right to property, which is supported by State law, and has heard this called "land grabbing."

CONCLUSION

Petitioner prays that this Honorable Court ssue Writ of Mandamus to correct filing date in he Court of Appeals to allow appeal to this case, nd that the District Court withdraw order closing ases and allow Petitioner withdraw "notice of appeal, hich was required to protect property from sale, nd allow cases to remanin in the United States istrict Court for review by writ of certorari.

She requests additional time to prepare urisdictional statement, and submits request for njunction against the sale of her property on arcella, and Jonestown Roads pending the due rocess of the Courts in pending cases.

May 12, 1986

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

CERTIFICATE OF SERVICE

I certify that a true and exact copy of this pleading has been served by First Class Mail, postage prepaid, to the Honorable Pierce Lively, United States Court of Appeals, 524 Post Office and Courthouse, Cincinnati, Ohio 45202, the Honorable Thomas Wiseman Jr. United States District Court, 800 Courthouse, Nashville, Tennessee 37209,and all parties of interest in this pleading through their counsel.

On the 12th day of May, 1986.

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

AFFIDAVIT

STATE OF MICHIGAN
COUNTY OF WAYNE

On the 12th day of May, 1986, before me personally appeared Earlene Polyak, to me know and acknowledged that she executed the foregoing Affidavit on her act and deed.

My Commission expires

Notary Public
MARY M. BARRETO
Notary Public, Wayne County, Michigan
My Commission Expires June 27, 1987

BEST AVAIL

ABLE COPY

SUPREME COURT OF THE UNITED STATES

Petitioner

vs

REspondent

AFFIDAVIT

Barlene Polyak, the undersigned, being duly sworn on oath deposes and says:

That she makes affidavit that as a result of prejudice, local influence and verbal abuse of a pro se ligitant, she does not believe she will be able to obtain justice in the State Courts, and it appears that the United States District, and Court of Appeals personnel affirm this observation.

Affiant sought the federal courts on grounds that she has been denied in state court proceedings her right secured by and guaranteed to her by laws providing for equal civil and constitutional rights of citizens the United States by the Fifth and Fourteenth Amendments.

Affiant prays that a writ on mandamus issue to allow review of the cases, which she has been unfortunately involved in an effort to defend her constitutional right to due process and just compensation for the reparable damage to her health, and the loss of the right to never be gained to her retirement home. Affiant has been unjustly accused of abusing the court process.

Affiant holds three degrees from the University of Michigan, and prior to open- heart surgery and complications, she obtained investigation, parole supervision, presentence, and other court experience. Affiant would never intentionally abuse the court process. She holds high regard for Courts.

Barlene Polyak

STATE OF MICHIGAN, COUNTY OF WAYNE,
On this the 20 day of May, 1986, before me appeared Barlene Polyak, to me known and acknowledged the foregoing Affidavit of her act and deed.

Apr. 2, 1990

Linda C Hammond

APPENDIX A

In the United States Court of Appeals for the Sixth Circuit.

Earlene Polyak, Plaintiff-Appellant v. Frank Hulen and Wilma Lesnansky, Defendant-Appellee, Case No. 85-5032/5101/5147. D.C. No. 1:84-0083.

Consolidated on appeal on request of counsel for the Respondent over objection of Petitioner on March 1, 1985, with:

Frank Hulen and Wilma Lesnansky, Plaintiff-Appellee, v. Earlene Polyak, Defendant-Appellant, Case No. 84-6090, D.C. 1:84-0082. Chancery Court of Lawrence County Case No. 1974, Court of Appeals and Supreme Court of Tennessee, Case No.83-405-II.

Filed: December 17, 1985. Ext.to 6/13/86.

Rehear denied on February 13, 1986.

Appeal from the United States District Court for the Middle District of Tennessee, Thomas A. Wiseman Jr., Chief Judge Presiding.

Before: KENNEDY AND KRUPANSKY, Circuit Judges; and SUHRHEINRICH, District Judge, for the Eastern District of Michigan.

SUMMARY OF DECISIONS

The Court of Appeals affirmed the decisions of the United States District Court dismissing Case No. 85-5032/5101/5147, and Case No. 84-6090, without oral argument or any kind of hearing when trial by jury was requested. This Court did not consider settlement by agreement, or whether the order to sell retirement home without just compensation for ten (10) year investment in restoration and maintenance unconstitutionally deprives Petitioner of property interest due process and calls for the Supreme Court's power of supervision.

Case No. 85-5032, and Case No. 84-6090, were consolidated over Petitioner's objections, and the supervisior denied Exhibits in these cases. It appears that these decisions are not recommended for full text publication.

Case No. 85-5032, was dismissed without hearing or jury trial as set out in the complaint, under diversity of citizenship, and filed the District Court in good faith to avoid local prejudice and local influence. Petitioner's request for just compensation is identified as injunctive relief and denied. And local counsel Edward Boston,

is awarded costs and attorney fees. Petitioner's request for restraining order pending process of the Courts is treated as cause of action, and right to retirement home, investment and equity as a result of investment, is totally ignored. Petitioner filed Case No. 85-5032, District No. 84-0083, on October 18, 1984. Court affirms dismissal res judicata.

Case No. 85-5101, is the result of Petitioner's objection to Edward Boston's award of attorney costs and fees.This case was held until Petitioner was obligated to submitt notice of appeal. Motion was finally put on docket on February 4, 1984, and Petitioner was obligated to file notice of appeal Case No. 85-5147, to try to appeal into Court of Appeals. Court added cost denied in Case No. 84-6090.

Case No. 84-6090, was removed on the grounds that Petitioner was denied in State court her rights as secured by the laws securing civil and constitutional rights by the Fifth and Fourteenth Amendment. The Court of appeals jurisdiction to review case, but reviews to award costs and attorney fees denied by the District Court, and this award is mentioned at least times.Court denies grounds in 28 U.SC 1443(1).

APPENDIX B

In the United States District Court, Middle District of Tennessee.

Earlene Polyak, Plaintiff, v Frank Hulen and Wilma Lesnansky, Defendants, Case No. 1: 8 -0083.

Filed:November 18, 1984.

Dismissed: December 3, 1984.

Petition to Rehear and Deny Attorney Fees, Denied December 12, 1984, Case No. 2.

Motion to strike Defendant's motion to Dismiss Award of Attorney fees and costs and Sanction marked"This matter has been appealed. This Court does not have Jurisdiction"

February 4, 1985.

Thomas A. Wiseman Jr. Chief Judge.

Appealed to the United States Court of Appeals For the Sixth Circuit.

SUMMARY OF DECISION

The District Court dismissed complaint asking that Plaintiff be awarded her rightful partition of property as agreed in 1976, with Frank Hulen adding acreage to his farm, and Wilma Lesnansky get acreage

to east of house, and Plaintiff getting house and small acreage to compensate for their additional acreage,on motion of local counsel Edward Boston. Counsel was awarded costs and attorney fees.

Plaintiff asked for a restraining order against sale of alloted crops antique furniture, and Burley Tobacco allotment, which had been taken in 1983. She also stated that she had heart problems and asked for the protection of the Court from cruel and unusual punishment as she was forced to go to hearing on July 29, 1983, in 102 degrees against nationwide warning for heart patients to stay inside. The Court used request for restraining order as cause of action in decision.

The Court ordered attorney costs and fees paid on January 9, 1985, and Petitioner submitted motion to dismiss award and objection to award of attorney fees and costs and sanction on January 17,but this motion was not filed, but held until February 4, 1985. Petitioner was obligated to submitt appeal within 30 days and while motion pending in Case No. 85-5101, then appeal order entered February 4, Case No. 85-5147.This order stated" This matter has been appealed. This Court does not have jurisdiction."

APPENDIX C

In the United States District Court, Middle District of Tennessee.

Frank Hulen and Wilma Lesnansky, Plaintiff v Earlene Polyak, Defendant, Case No.1:84-0082

Filed: October 1, 1984.

Dismissed: October 26, 1984.

Presiding: Thomas Wiseman Jr, Chief Judge.

Appealed to the United States Court of Appeals for the Sixth Circuit on November 6, 1986.

SUMMARY OF DECISION

The District court dismissed the claim of Petitioner for failure to state a claim on which relief can be granted. Respondent's request for costs and attorney fees denied. Oral argument denied.

This case was removed from the Chancery Court in Lawrence County, Tennessee. It was Petitioner's understanding that Court could be petitioned to hear appeal, after a telephone conservation with the Honorable Thomas Wiseman in August, 1983, or new trial.

Petitioner grounded her petition for removal on the basis that she was being denied by State Court laws providing or equal civil and constitutional rights as provided by the Fifth and Fourteenth Amend.

Petitioner supports the fact that she submitted Constitutional questions in her petition. She asked for a new trial,or alteration,or amendmendment of judgment to allow her just compensation for the restoration and maintenance of her retirement home, and describes the unfair and unjust hearing that was conducted while the jury was out on another trial, and her acute illnes due to 102 degree heat wave, and nationwide warning to heart patients 7/29/83.

Petitioner referrs to the local prejudice and political influence, which she believes is in violation of her civil rights. William Boston identified her as a non-resident, and in one brief he described the Farm Building Company as miniotes to . The identification as a non-resident violates the constitutional right of privileges and immunites in the Fourteenth Amendment. Petitioner was not allowed to probate without being joined with a resident by Tennessee law. It is stated

> A complete list of the priveleges and immunities ... but basically it means that a State may not discriminate against a citizen from another State simply because he is nonresident. Magruder's American Government, (1959 Amendment 14 739).

APPENDIX D

In the Court of Appeals and Supreme Court of Tennessee, Middle Section at Nashville.

Frank Hulen and Wilma Lesnansky, Plaintiff-Appellee v. Earlene Polyak Defendant-Appellant.

Civil Action No. 83-405-II.

Filed:February 22, 1984.

Dismissed: April 26, 1984.

Presiding at the Court of Appeals: Judge Henry F. Todd P.J., Judge Samuel Lewis, Judge Ben H. Cantrell, and Judge Lewis H. Connor, Jr.

This Appeal is from the Chancery Court, Lawrence County, Tennessee, from the Order to sell Petitioner's property without just compensation entered on October 19, 1983, and denial of motion for a New Trial, or for Alteration and Amendment of Judgment to allow for compensation for restoration of retirement home entered on December 20, 1983.

Presiding: The Honorable Jim T. Hamilton at both hearings.

SUMMARY OF DECISIONS

Petitioner grounded this appeal in her belief that the order to sell her retirement home verbally issued on July 29, 1983, followed by entering

order to sell on October 19, 1983, unconstitutionally deprived her property without just compensation for the restoration and maintenance at Public Auction for the benifit of others and in violation of the Fifth and Fourteenth Amendment.Petitioner asked the attorney for the defense for a New Trial within three days of the decision on July 29, 1983. And Petitioner argued again before the Honorable Jim Hamilton that her constitutional rights were being violated, asked for a New Trial, and argued for just compensation for restoration of retirement home.

The Trial Clerk filed the technical record in the Court of Appeals on January 26, 1984, just 23 days after notice of appeal submitted on January 3, and without including notice of appeal.It appears that she scheduled oral argument as card stated "Oral Argument" scheduled for April 30-May 4, 1984. Case was suddenly dismissed on technicalities as Notice of Appeal was not submitted in technical record. Petitioner was allowed a brief on technicality of dismissal, but it was decided that she should have appealed order instead of judgment.Judgment

prepared by attorney for plaintiff, William Boston is as follows:

JUDGMENT

This cause came on to be heard on the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge, upon Motion this day filed by defendant, personally in her own behalf, Statement and argument of the Defendant, Earlene Polyak, in her own behalf, from all of which the Court finds there to be not merit, and said Motion is here and now overruled in its entirety. Judgment is signed by William Boston and Judge Hamilton on December 20, 1983.

An order submitted by attorney for the defense, Thomas Stack, after he was dismissed and without petitioner's knowledge, is as follows:

ORDER

This cause came to be heard on this the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Courts of Lawrence County, Tennessee, on the Motion for a New Trial or for Alteration or Amendment of the Order previously filed herein by Defendant, Earlene Polyak by and through her counsel of record, Henry, Henry & Stack: and upon the oral motion of said Earlene Polyakto be allowed to represent pro se and that Henry, Henry & Stack be relieved as counsel and further that aforementioned Motion not be heard by this Court: IT IS THEREFORE ORDERED that Henry, Henry & Stack are relieved as counsel in this cause and that aforementioned Motion for a New Trial, etc, be and is hereby dismissed. This order is signed by Thomas Stack, William Boston and Judge Hamilton on January 10, 1984.

The above judgment and order were entered after pro se Petitioner had assumed her own case, with the permission of all parties and the Judge, and argued from notes on a yellow paper.for a New Trial and Alteration or Amendment of previous order of July 29, 1983.Petitioner has suspected for sometime that Mr. Stack was not representing her best interest, and after he returned her materials she found that he did not enter Memorandum Brief, evaluation of property, bills for restoration of house,or prepare a transcript of the proceedings.

Petitioner filed a Petition to Rehear on March 12, 1984, stating that Technical Record had been prematurely filed(by Mrs. Frances Freemon, Clerk and Master), and that brief and Statement of Evidence were not due until March 14, 1984. On April 2, 1984, Judge Hamilton rejected Petitioner's Statement of Evidence containg verbatun description of two hearings, evaluation of property, and assessed improvement value of house as a result of her restoration of $810.00 on 1983,tax statement, and evidence remains supressed from the record. Judge Hamilton certified William Boston's Bill of Exceptions.

Petitioner submitted timely main brief on February 22, 1984, but the brief was never considered as the Court of Appeals dismissed this case on April 26, 1984. The pertinent part of decision folows:

> And it appearing from the record that appellant's motion to alter or amend was heard on December 19, 1983, that on January 3, 1984, appellant filed a notice of appeal"from the final judgment entered on December 20, 1983, but the order overruling appellant's motion to alter or amend was not entered until January 10, 1984.
> ... and it appearing that the judgment from which appeal was sought is not a final judgment appealable as of a rightunder TRAP Rule 3 in that said judgment orders the sale of property but does not confirm any sale or transfer title;
>
> IT IS THEREFORE ORDERED that this appeal be and hereby dismissed at the cost to the appellant without prejudice to review of any and all actions of the Trial Court by appeal prosecuted from final judgment.

Prior to the above decision, Petitioner argued on the technicalities, and that the cost of the sale of this property added to the denial of civil and constitutional right by taking property without just compensation, and without due process for sale at Public Auction and in violation of the Fifth Amendment.

Petitioner argued that order of January 10, submitted without her knowledge, and since

she was without counsel, in violation of Rule 58, T.R.A.P.,"adds the requirement that a judgment or other action of the Court cannot be filed until it bears not only the signature of the judge, but also (1) the signatures of all parties or their counsel" And if this order should have been appealed, her notice was submitted only six days prior to order, and T.R.A.P.,Rule 4(d)a notice of appeal filed before the entry of the judgment shall be treated as filed after such entry and on the day thereof, and (d) establishes general rule that a right of appeal is not lost by filing the notice of appeal before judgment appealed.

Judge Hamilton ignored all of Petitioner's motions to correct the record and counsel for Plaintiff argued that order disposing of motion for new trial not entered, but Judge Cantrell ruled on January 19, 1983," the Court reasoned that while 58.02 T.R.A.P., indicates that a motion cannot be disposed other than by filing order..."the Trial Judge had verbally overruled Petitioner's motion and wrote word over-ruled on dockett... Gilliam v. Butler,663 S.W. 2d 401(Tenn. App. 1983). Judgment overruled motion.

SUPREME COURT

In the Supreme Court of Tennessee, Middle Division, this case same No. 83-405-II.

Presiding: William Foner, Chief Judge, Ray Brock, Robert Cooper, Frank Drovota, and William B. Harrison, Associate Judges.

Application for Permission to Appeal submitted on May 17, 1984, and denied on July 2, 1984.

Petition to Rehear Denial of Application for Permission to Appeal to the Supreme Court submitted on July 12, 1984.

A Motion to Permit Second Petition to Rehear was filed on September 4, 1984, and denied on October 1, 1984.

SUMMARY

In the application for permission to appeal, Petitioner stated that she was being denied civil and constitutional right to appeal and due process to defend her right to her property and requested the supervisory power of the Supreme Court. She tried to that the judgment on which the Court of appeals ruled was not a final judgment appealable as a righ pursuant to Rule 3 TRAP, and stated that Rule 60.02 T.R.A.P, gives the Court power to correct

the misconduct of adverse party. Petitioner submitted a motion to releave and revise judgment on July 10, 1984. She suggested the many mistakes by the Trial Judge, such as crossing county lines from the county from complaint registered, to hasty hearing while jury was out on another trial, and that Trial Judge's order to sell property "are not conclusive upon Appellate Courts. Citizen's National Life Insurance Company v. Witherspoon, 127 Tenn. 363 155 S.W. 139(1912).

Petitioner stated that she had prepared house t her own expense for retirement and that it is ot manifestly in her best interest that this property e sold." a sale for partition, where there is no vidence to show its nesessity, will be set aside." radbury v. Martin 3 Shannon's Cases 469(1975). Tenn. d that "Parole Partition of land followed by persons possession is binding and enforceable." Martin v. ylor, 521 S.W. 2d 582(Tenn. 1975). Petitioner has stored and maintained property since 1976, which ten(10) years, and her rights are supported by atute and an abundance of case law in Tennessee.

And the loss of her retirement home is an eparable damage to her health and right to property.

APPENDIX E

In the Chancery Court of Lawrence County, Lawrenceburg, Tennessee.

Frank Hulen and Wilma Lesnansky, Plaintiff v. Earlene Polyak, Defendant. Frank Hulen is 74 years, Earlene Polyak 64, and Wilma Lesnansky 62, years of age. Petitioner was identified as non-resident in suit.

Complaint and restraining order against finishing restoration of 45 year old house to move to Tennessee was served on Petitioner on April 19, 1983.

Hearing held in Columbia, Maury County when complaint entered in Lawrence County and against Tennessee law, while the jury was out on another trial, on July 29, 1983.

Presiding: The Honorable Jim Hamilton.

Judge Hamilton verbally issued order to sell property within two hours when attorney for the defense, Thomas Stack, Henry, Henry & Stack started to give summary.

The order to sell property was formally issued, naming Eulan Hooper, Real Estate Auctioner, to sell it. Mr. Hooper testified that property could not be divided for Plaintiffs.They were represented by William Boston, Boston, Bates and Holt, who represented

the family since 1976, and divided loyalties to file complaint against Petitioner.

Notice of appeal filed in Chancery Court of Lawrence County,on January 3, 1983.

Main Brief filed on February 23, 1983.

Statement of Evidence mailed to Chancery Court on March 2, 1984. Notice of appeal ans statement timely.

SUMMARY

Within one week after Mrs. Rena Ann Hulen's death, Respondents initiated settlement by agreement of property with Frank Hulen adding the back strip of forty (40) acres to his property, Wilma Lesnansky would get the acreage to the east of the house, as her son wanted to build house, and Petitioner was to get forty (46) year old house with roof falling in, and acreage in front, approximately six to ten total acres. As a result of agreement Petitioner and husband, Alex Polyak traveled to the farm at least twice each year to hire new roof put on house, which cost over $1200.00. In 1982, Frank Hulen stated that he wanted the house sold so his kids could buy it,and he,and Wilma Lesnansky sued for sale, and William Boston divided his loyalties and represented them in suit.

Petitioner became suspicious that Mr. Stack as not representing her best interest when he eglected to answer letters, and answer telephone calls nd went to Tennessee, on August 22, 1983, to check roperty and confront Mr. Stack. He did write letters o William Boston, who was holding order to sell for 54 days, gainst Tennessee law to enter within seven days.

On December 19, 1983, Petitioner took more bills or the restoration of the house and went to Court o be present while Mr. Stack argued for New Trial nd Alteration or Amendment of previous order, in hich she was not given any compensation for restoration nd Judge Hamilton ordered her to pay Court Costs, but warded attorney fees for sale. Judge Hamilton named ulan Hooper to sell property. Mr. Hooper has since ost his license for six months and is on two year robation with the Real Estate Commission.

Petitioner assumed her own case when Mr. Stack efused to present bills to the Court. He had already ndicated that he did not believe Judge Hamilton ould allow her any money for restoration. She had nfronted Mr. Stack with an unfair and unjust trial his office on August 1, 1983, within three days.

Petitioner confronted Judge Hamilton with an unjust and unfair trial and she believes that she raised the constitutional question again on December 19, 1983, as her property was being taken without just compensation in the Court. She asked for a New Trial, based on (1) she was taken across county lines for hearing in Maury County, when complaint was filed in Lawrence County and she believes this is against Tennessee law,(2) Plaintiff Wilma Lesnansky did not come to the hearing, or testify when she signed complaint and initiated agreement to divide property in the best interest of all(3) valuable evidence was with held with Mrs Lesnansky's testimony and Alex Polyak did not get to give testimony. He was aware of agreement and present when division lines were being drawn for the third time by Frank Allen. Alex Polyak did all of the work clearing heavy underbrush, which is difficult for him as he wears an artificial limb as a result of World War II,(3) Petitioner was obligated to attend hearing on July 29, 1983, in 102 degree temperature against nationwide warning ro heart patients to stay inside. She became ill as a result of exposure to heat in front of Mr. Black's office and asked two times for the hearing

to be rescheduled to allow her to get better,(5) Petitioner's case was not given adequate time and consideratikn by the Court due to the fact it was held while the jury was out on another trial.

Petitioner predicated her argument for amendment or alteration of previous order on the Court's failure to award her any monies spent for the restoration of the property out of the proceeds before the distribution of any of the money from the sale.Judge Hamilton verbally denied motion and told Mr. Boston to prepare judgment and instructed Petitioner to get her appeal in within ninety(90) days.

After Mr. Stack returned Petitioner's materials from her case, she learned that he did not enter record any of the bills for the restoration of the house, as he returned all of them. He did not enter the evaluation and division of the property into three equal parts of value prepared by Mr. Buford Evans, but testified against her for service that he ordered without her permission or knowledge. Mr. Stack did not enter memorandum brief which he was allowed to submit after judge ordered property sold, or provide a transcript of the proceedings. Petitioner believes Mr. Evans map invalid representation of property. Mr

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failed to keep agreement in letter with $1500.00 check, in which Petitioner wrote that it is my understanding if we are not successful in Lawrenceburg we will appeal to a higher Court. He had told stated that his work would not appeal.

The memorandum brief does verify that partition in kind if favored and governed by statute in Tennessee Code Annotated 29-27-101, et seq., and at 29-27-201 et. seq., and supported by years of case law. including one case she found dated 1975. She does not believe the legislature has changed any of these laws, but it appears the Court is ruling that [illegible] cited property, especially non-resident, be sold at Public Auction.

Petitioner contends that she has spent ten(10) years restoring and maintaining her house in a more moderate climate, and that the loss of this property is an irreparable damage to her health, and the loss of a right to never be regained to her retirement home.

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